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Simmons' Critique of Natural Duty Approaches to the Duty to Obey the Law

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is incorrect; Wellman does demonstrate that if agents have a moral duty to support the specifically political institutions that comprise their state, then their support ought to take the form of obedience to its law.

I.

I begin with a much abbreviated reconstruction of Wellman's argument for the duty to obey the law.⁵

1. All moral agents have a natural duty to rescue others from significant harms as long as the cost of doing so is reasonable. Call this a samaritan duty, or duty of easy rescue.
2. The perils of a Hobbesian state of nature constitute a significant harm.
3. Therefore, as long as the cost is reasonable, all moral agents have a samaritan duty to save others from the perils of a Hobbesian state of nature (or, as Simmons sometimes writes, a duty to provide security for all). (From 1 and 2.)
4. Only specifically political institutions—or, more controversially, the modern state—provide(s) a reliable defense against the perils of a Hobbesian state of nature.
5. Therefore, as long as the cost is reasonable, agents have a samaritan duty to support the state, since only by doing so can they rescue others from the perils of a Hobbesian state of nature. (From 3 and 4.)
6. If the benefits that the state provides each individual are taken into account, the cost to each of them of supporting the state is a reasonable one.⁶
7. Therefore, agents have a samaritan duty to support the state. (From premises 5 and 6.)⁷

As Wellman recognizes, however, protection from the perils of a Hobbesian state of nature can be accomplished with less than universal support for the state. What the argument thus far implies is that *some* agents have a samaritan duty to support the state (specifically, whatever number of agents suffices in a particular case to ensure that the state succeeds in providing protection from the perils of a Hobbesian state of nature). What it does not show is that each agent has a duty to support the state in every case. In order to establish this conclusion, Wellman adds another premise:

8. All those with a duty to rescue others from the perils of a Hobbesian state of nature ought to contribute their fair share to the achievement of this goal.

Thus, even if my failure to support the state has no effect on the provision of security for all, I still act wrongly because I treat unfairly those who do support the state. It is only because they do so that my failure to support the state does not wrong those who have a claim against me that they not suffer the harms likely to occur in the state of nature. Since there is no morally relevant distinction between those who support the state and me—we all bear the same samaritan duty—I have no justification for according myself a privilege I can enjoy only as long as they do not. Therefore,

9. Agents have a samaritan duty to do their fair share in supporting the state. (From 5, 6, and 8.)

It still remains to be shown, however, that every agent's contribution of his or her fair share of support for the state must take the form of obedience to law. After all, just as the state can provide security for all even in the face of a limited number of non-contributors, so too it can accomplish this goal even when a limited number of those who support it do so by means other than obedience to law, or who choose instead to

Simmons' Critique of Natural Duty Approaches to the Duty to Obey the Law

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In his most recent book on the moral duty to obey the law, A. John Simmons considers and rejects a number of natural duty approaches to justifying political authority.¹ Among the targets of Simmons' criticism is the account defended by the book's co-author, Christopher Heath Wellman.² In this essay, I evaluate the force of Simmons' objections to Wellman's account of political obligation. As will become clear below, I think Wellman's defense of the duty to obey the law defective in certain ways—but not in all of the ways that Simmons argues it is. By rebutting some of Simmons' criticisms and identifying the limits of others, I aim not only to indicate one direction in which a renewed defense of natural duty approaches to political obligation might proceed, but also to encourage the pursuit of such a philosophical project.³

Simmons levels three main challenges to Wellman's samaritan account of the duty to obey the law. First, he questions the existence of a samaritan duty as Wellman characterizes it, arguing that it is a strange hybrid of a samaritan duty as understood in paradigm cases of easy rescue and an imperfect duty of charity. Second, Simmons argues that Wellman cannot account for the particularity of the duty to obey the law; that is, the fact that an agent's alleged moral duty to obey the law is almost always conceived to be owed to a particular state, usually the one in which the agent enjoys legal citizenship. Third, Simmons contends that Wellman's argument fails to demonstrate that agents have a duty to *obey* the law of their state; rather, at best it entails that most agents will often, but not always, have good reason to *comply* with the law.⁴ In response, I argue for the following conclusions. Simmons' first criticism is correct, but the (alleged) moral duty Wellman employs as the foundation for his argument can easily be replaced by some other (genuine) natural moral duty or duties. Simmons' second criticism is also correct, but it only establishes one conclusion that he has long advocated, namely, philosophical anarchism, and not another, namely, that consent is the only *possible* means whereby a state can come to enjoy authority over an individual, and that individual a correlative duty to obey the law. Simmons' third criticism

support some other state. To address this point, Wellman once again appeals to fairness:

10. Discretion with respect to the form an agent's support for her state will take, or which state she will support, is something all agents have reason to value.⁸ Given this, and given that only a limited exercise of such discretion is compatible with the state's provision of security for all, it follows that any agent who unilaterally exercises some of this limited discretion treats unfairly the other members of her state—i.e., those who by forgoing the exercise of this discretion (which they have reason to value) make it possible for this defector to act as she does without undermining the provision of security for all.

Wellman concludes, therefore, that:

11. All moral agents have a duty to obey the law of their state. (From 9 and 10.)

II.

Simmons' first objection to Wellman's argument concerns the claim that the duty to save others from the perils of a Hobbesian state of nature is but one instance of the more general samaritan duty to rescue others from significant harms when the cost of doing so is not unreasonable. Paradigmatic cases of easy rescue involve statistically abnormal threats of immediate or imminent harm, and given their statistical abnormality (both in terms of how many people suffer the (risk of) harm and how often anyone does so) such cases usually involve a rather limited number of agents. In contrast, the perils of a Hobbesian state of nature that Wellman invokes to justify a duty to obey the law are statistically normal, the harm at issue is a future, potential, one, and the number of people with either a right to be rescued or a duty to rescue, or both, is (almost) limitless. There seems to be good reason to doubt, therefore, that the duty to provide security is an instance of the general samaritan duty of easy rescue.

Indeed, Simmons argues convincingly that Wellman's account of the duty to obey the law rests on an odd hybrid duty that combines elements of both a samaritan duty of easy rescue and a duty of charity. The localized nature of the duty to provide security (i.e., the claim that agents have a duty to rescue their compatriots), and the fact that those in need of rescue from the perils of a Hobbesian state of nature have a right to it, follow if the duty is a genuine samaritan one.⁹ The fact that the duty to provide security is owed to all members of an agent's political community (and not just those he interacts with face-to-face), and that it involves the prevention of a potential, future, harm, which is a perennial rather than periodic threat, follow if the duty is one of charity. Simmons concludes that "the specific form of Wellman's duty seems to be inspired primarily by his argumentative needs, not by independent reasons to believe such a duty exists."¹⁰ Moreover, he maintains that as they are commonly conceived, neither the duty of easy rescue nor the duty of charity can provide a foundation upon which Wellman can construct a defense of the duty to obey the law. The elements Wellman takes from the other duty in constructing his hybrid indicate those features that each of these duties lack, but that are necessary for the success of his argument.

Though I think this first objection Simmons raises to Wellman's account correct, it is easy enough to see how Wellman's argument might be modified to avoid it. Rather than basing the argument on an alleged duty of easy rescue, Wellman could instead appeal to a certain conception of those duties correlative to all agents' basic moral (or human) rights. The conception I have in mind is one that understands the fulfillment of these duties to include positive acts of provision

as well as negative acts of forbearance.¹¹ On such a conception of people's basic moral rights, the duty to provide others with security (or the secure enjoyment of their basic moral rights) requires that an agent do more than simply refrain from acts that directly undermine others' security, such as assaulting them. In addition, agents must take positive steps to see to it that all enjoy security, say by contributing to the creation and preservation of institutions that enforce people's basic moral rights, such as a moderately just police force.¹² Note that the duties of positive provision that correlate to people's basic moral rights differ from the duty of charity Simmons describes. The objects of the former are things or forms of treatment owed to particular people (i.e., each of the agents with a right to it), while the object of the latter (whatever it may be in a particular case) is not.¹³ Furthermore, insofar as it is an imperfect duty, charity is not something an agent must display in every situation where it is possible for him to do so; rather, morality permits an agent to act on a non-moral reason (such as self-interest) in some percentage of these situations. In contrast, the duties of positive provision correlative to people's basic moral rights are perfect ones, meaning that unless such duties are defeated by other moral considerations, agents must carry them out in every situation where it is possible for them to do so.

The replacement of Wellman's hybrid duty with the duties correlative to people's basic moral rights—henceforth, for brevity's sake, the duty to promote basic rights—appears to only exacerbate the challenge to all natural duty approaches that samaritanism was supposed to address, namely, accounting for the particularity of the duty to obey the law. Of course, if Simmons argues correctly when he contends that there is no reason to accept the existence of the hybrid duty Wellman describes, as I believe he does, then nothing has been lost if we substitute for it the duty to promote basic rights, even if an argument premised on the latter duty cannot justify a particularized duty to obey the law. Simmons will likely reject the rough sketch of the duty to promote basic rights I offer here, especially the idea that all moral agents owe natural duties of positive provision to all moral persons, and not just those with whom they have transacted in certain ways (e.g., to whom they have made a promise), or that they can easily rescue, or to whom they owe reparation. Unlike Wellman's hybrid duty, however, something similar to the duty to promote basic rights as I characterize it is defended by a significant number of theorists and practitioners (e.g., non-governmental organizations such as Human Rights Watch and Amnesty International). Moreover, many of those who defend it do so without any thought of the role it might play in a defense of the moral duty to obey the law; indeed, for all I know, some defenders of the duty to promote basic rights may be philosophical anarchists. Obviously, these facts do not demonstrate the truth of a duty to promote basic rights as I have characterized it here. But they do render such a duty secure against the kind of objection Simmons makes to Wellman's hybrid duty, namely, that there is no reason to believe that such a duty exists other than the role it plays in a defense of political obligation.

Moreover, as Simmons makes clear, even if we grant Wellman his hybrid duty, he still cannot justify an agent's duty to support his particular state (and so a duty to provide that support in the form of obedience to his state's law). The duty in question is owed to all those vulnerable to the perils of a Hobbesian state of nature, not just those who are vulnerable and who happen to be legal subjects (or citizens) of the same state as the agent. Even if we assume that the fulfillment of the duty to provide security requires agents to support specifically political institutions, it seems quite likely that some agents, some of the time, will be able to contribute equally or better to the provision of security for all by supporting political

institutions other than those that comprise their own state. As Simmons points out, Wellman and others cannot appeal to considerations of fairness in order to meet this challenge; that is, they cannot argue that even though support for some other political institution contributes just as much or more to the morally mandatory end, it also involves treating my fellow citizens unfairly, and so I ought not to do it—or, in other words, that I have a moral duty to support my particular state. Considerations of fairness arise only amongst those with a duty to participate in the collective pursuit or realization of some end. Yet, thus far, neither Wellman nor any other defender of a natural duty approach has provided a compelling explanation for why an agent's fulfillment of his natural duty requires that he contribute to the particular collective action scheme (broadly construed) that partly constitutes the state of which that agent is a legal subject or citizen.

To repeat, an individual accused of treating his compatriots unfairly when he elects to promote security for all by sending money to the United Nations instead of paying taxes to his state can respond as follows. I only treat you unfairly if I have a duty to do my fair share of providing security for all by supporting our particular state. But you have not shown that I must adopt this particular means for carrying out my duty to provide security for all. It seems extremely unlikely that you can do so on empirical grounds; for example, by demonstrating that I can only fulfill this duty by supporting my particular state, or even that support for my state will always provide a far superior (i.e., more effective and/or more efficient) means for doing so, even if it is not the only means to that end.¹⁴ It seems equally unlikely that you can do so on moral grounds by showing that I have a special obligation to my compatriots, say one grounded in consent or my occupying the legal role or office of citizen.¹⁵ Of course, you might invoke a (*sui generis*) moral duty to rescue one's fellow citizens from the perils of a Hobbesian state of nature, but doing so settles the matter of particularity by fiat, rather than by rational argument.

In short, Simmons' criticism of Wellman's defense of the duty to obey the law on the grounds that it cannot account for that duty's particularity strikes home even if we grant the existence of the hybrid duty on which Wellman bases his argument. Nor will Wellman's argument fare any better if we replace that hybrid duty with a duty to promote basic rights. I consider elsewhere the ability of a natural duty approach that assigns a central place to democracy to account for the particularity of the duty to obey the law.¹⁶ Here, however, I want to consider the implications for Wellman's argument of his inability to demonstrate that an agent's fulfillment of his natural duty (whatever exactly it is) must take the form of support for his particular state.

This shortcoming in Wellman's account of political obligation does not eliminate it as a genuine justification for the moral duty to obey the law. Rather, it entails that agents can come to have such a duty on something like the grounds Wellman appeals to only in a world with a single legal system. Assume for the moment that in order to fulfill their natural duty to others, agents must support specifically political institutions, and that their support must take the form of obedience to law. If all humanity is subject to a single legal system, then given these assumptions an agent will be able to fulfill his duty only by obeying the law of this single, global, state. In such a world, all agents will have a moral duty to obey the law.¹⁷ Insofar as the world is not currently organized as a single state or legal system, this response to the particularity challenge commits Wellman to the conclusion Simmons defends in their recent book, namely, philosophical anarchism. This is the view that few if any subjects of existing states have a general moral duty to obey the law of

those states. Yet, while Simmons is sometimes concerned to defend only philosophical anarchism, at other times he defends a stronger conclusion, namely, that the only *possible* means by which a political institution can come to enjoy a morally justified claim to authority over any individual is via that person's consent to its rule.¹⁸ However, the particularity requirement does not appear to rule out as *impossible* Wellman's account of political obligation, or a version of it that replaces the hybrid duty to rescue others from the perils of a Hobbesian state of nature with a duty to promote basic rights. It seems worth considering, therefore, the validity of Simmons' third criticism of Wellman's argument for the duty to obey the law.¹⁹

Simmons contends that even if he grants "that I am morally bound to do my fair share in preventing the local emergency of lawlessness," it does not follow that he has a moral duty to obey the law. This is so because obedience to law is but one method of responding to the emergency, which is not lawlessness itself, but rather the harm (or perhaps vulnerability to harm) that people suffer in the absence of law (i.e., in a Hobbesian state of nature). Simmons argues that he could carry out his duty by directly providing security for himself and two or three others in need of it, perhaps "fancifully, by building a secure compound in which I invite some others to stay."²⁰ In fact, Simmons is unwilling to grant Wellman even this much; as he goes on to ask:

Why can I not simply do the duty described by Wellman just by scrupulously refraining from violence (deception, etc.) toward others (and letting others see my intention in this regard), while acknowledging no duty at all to *obey* the law? Since legal coercion and a sense of duty can assure my fellow citizens of my doing no more than this in any event, how can it be that my anarchist refusal to *obey* constitutes a failure to do my part in contributing to the security of all?²¹

Both of these objections follow from a purely instrumental interpretation of Wellman's argument; that is, Simmons understands Wellman to be claiming that agents must contribute their fair share to the provision of local security—that is an end they are morally required to promote—and argues that Wellman does not show obedience to law to be a necessary means to that end. As I will now demonstrate, however, Wellman's argument for the duty to obey the law is not a purely instrumental one.²²

Consider, first, Simmons' claim that he can contribute his fair share to the provision of local security simply by refraining from acts that directly violate others' rights, and making clear to others that he will do so. As I indicated earlier, I believe (and I think Wellman does as well) that the provision of local security requires that agents do more than simply refrain from certain sorts of rights-violating conduct. In addition, it requires support for institutions that enforce people's rights, such as a police force, and institutions that determine when people's rights have been violated, such as courts. Standards of justice for the latter sort of institution, such as a (defeasible) prohibition on *ex post facto* conviction, entail the moral necessity of institutions that provide publicly accessible rules defining what sorts of conduct will be viewed as rights-violating; in other words, a legislative body. At the very least, then, an agent will have to contribute a share of the resources necessary for the creation and maintenance of such institutions; that is, pay a tax and perhaps take a turn in one or more of the offices in these institutions.

At least for the sake of argument, however, Simmons appears willing to grant that doing one's fair share in the provision of local security requires positive action, and not merely refraining from acts that directly violate others' rights.

He denies, however, that this positive action must take the form of obedience to law; for example, the payment of taxes. Rather, Simmons maintains that an agent could contribute his fair share to the provision of local security by directly protecting a few people from the rights-violating conduct of others. It may appear that Wellman can rebut this claim simply by appealing to the following two reasons he gives as part of his justification for the state. First, even well-intentioned and conscientious agents will likely reasonably disagree as to what counts as the adequate provision of security to (local) others, and/or what counts as doing one's fair share of that task. Second, such agents are also likely to suffer from, or be perceived to be suffering from, various biases when they serve as judges in disputes to which they are a party. In the absence of specifically political institutions—i.e., ones that provide a relatively neutral (and, therefore, to some extent, just) method for settling disagreements like those just mentioned (at least for action-guiding purposes), applying those settlements to particular cases, and enforcing them when necessary—the practically inevitable result will be frequent harmful (or rights-violating) conflicts. Thus, it is not possible to contribute one's fair share to the provision of local security by means other than adherence to law (or, more precisely, the law that governs local relations).²³

Yet, Simmons will counter that as long as a sufficient number of people do their fair share of providing local security by obeying the law, the considerations Wellman points to will not suffice to show that he must obey it. Rather, a limited number of agents, including Simmons, will be able to fulfill their duty by means other than obedience to law. In some cases, we may suppose, there will be no disagreement between Simmons and the law as to what justice requires, either in the abstract or in a particular case. In other cases, Simmons might think the law mistaken, but also think that given widespread compliance with the law and the likely consequences for him and those he protects should he act contrary to it, what he morally ought to do, all things considered, is act as the law demands. In these cases Simmons will have a moral reason to comply with the law, but not to obey it. Finally, in some cases Simmons may think the law mistaken, and believe with good reason that disobedience to it will not result in any harm, either to him and those he protects, or to others, or to the state's ability to provide security. In these cases, Simmons will have neither a moral reason to obey the law, nor a moral reason to comply with it.

To claim that an agent has a moral duty to *obey* the law is to claim that he has a (perhaps *prima facie*) duty to do what the law demands simply because the law demands it. In contrast, to claim that an agent has a moral reason to *comply* with the law is to claim that he has a moral reason to act as the law demands, but not *because* the law demands that he so act. As was just indicated, an agent can deny the law's claim to authority, and at the same time acknowledge that he is morally required to act as a particular law would have him act because he has independent moral reasons to do so (as in the case of a law prohibiting murder) or because contingent factors such as patterns of coordination established by the law (and/or the state's coercive enforcement of it) entail that, all things considered, the morally best act for the agent to do is the one the law demands from him.²⁴ Simmons' claim, again, is that at best Wellman's argument shows that he will sometimes, but not always, have a moral reason to comply with the law. It does not show that he has a duty to obey it.

Simmons fails to recognize, however, that considerations of fairness play two distinct roles in Wellman's argument. First, as Simmons notes, fairness figures centrally in the specification of the end morality requires each agent to promote. Each agent must contribute his or her fair share to the provision of (local)

security. But second, fairness—or treating others fairly—also figures essentially in Wellman's argument that each agent's contribution must take the form of obedience to law. Wellman grants that cases are likely to arise in which either (a) an agent can do an equal or better job of supporting the state (and so providing local security) by acting contrary to the law, or (b) that it will make no difference to the existence and efficacy of the state (and so to the provision of security for all) whether or not the agent complies with the law. However, in both cases an agent's acting contrary to the law is compatible with the state's provision of security for all only because a significant number of agents comply with it. In other words, the liberty or discretion to act contrary to the law cannot be enjoyed simultaneously by all, and therefore, Wellman argues, it would be unfair for any particular agent to unilaterally exercise the discretion that is possible for some, but not all, to enjoy when all have an equal claim to it. Note that the unfairness follows from the *unilateral* exercise of discretion to which all have a claim but that some can enjoy only as long as others do not. Presumably Wellman will not object if the limited exercise of discretion compatible with the effective provision of security by the state is distributed by a fair procedure, such as a fair lottery or a majority rule decision procedure in which all have an equal vote. The problem is that the unilateral exercise of this limited discretion is not such a procedure.

Some might argue that a first-come first-served principle for distributing the limited discretion at issue also counts as a fair distribution, since it is "unclaimed" and so open to all.²⁵ This claim strikes me as false. Even if natural resources can be accurately described as unclaimed until some agent does something to take possession of them, and thereby acquire a right to them, the same is not true of the limited discretion at issue here. This is so because that discretion—that is, the possibility of acting contrary to law without failing in one's samaritan duty to contribute one's fair share to the provision of (local) security—obtains only because enough other agents comply with the law. In other words, those other agents collectively create the discretion in question, and, therefore, decisions about how it ought to be distributed must be made collectively or, as I argue elsewhere, via a procedure that gives each of the agents that (ought to and do) play a part in creating it equal authority to settle this matter.²⁶ Note that no agent can justify acting contrary to law by claiming that he is exercising only his fair share of discretion, since this requires that he act on the very sort of unilateral judgments (e.g., regarding the existence of limited discretion, and what counts as a fair share) that agents must forswear acting on in order to treat (local) others fairly.

The duty to *obey* the law follows from the moral requirement that agents treat fairly those with whom they act in order to provide security for all. As Simmons himself acknowledges elsewhere, the duty to treat others fairly is a matter of respect for others' status as moral agents.²⁷ As such, it is not justified on instrumental grounds; for example, merely because it is a means to a state of affairs in which all those with a right to it enjoy security. Thus, obedience to law is not owed to others because they are vulnerable to various harms or wrongs likely to occur in a Hobbesian state of nature; rather, it is owed to others because they have an equal claim to the discretion made possible by the fact that the law can tolerate a limited amount of disobedience. By obeying the law, agents acknowledge their compatriots' equal claim, and so their equal status as moral agents.

Simmons only briefly acknowledges this second role that fairness plays in Wellman's defense of the duty to obey the law, and he clearly does not appreciate its non-instrumental character. He writes:

obedience is only a *means* to general enjoyment of the good of security...the fact (if it is a fact) that everyone's using his discretion in genuinely trying to treat others well would cause chaos [does not effect the conclusion that] if one can do one's part in promoting that good *without* obeying the law, one has surely in so doing discharged any moral duty one might have.²⁸

As I have shown, Wellman does not offer a purely instrumental justification for the duty to obey the law. Rather, Wellman offers an instrumental justification for the state (or political institutions, or a legal system): it is the only means for achieving a state of affairs in which all enjoy security. Wellman then offers a non-instrumental justification for the claim that all moral agents have a duty to support it (even if their support is not necessary for the achievement of security), and, as we have just seen, the claim that support for the (or one's own) state must take the form of obedience to law. Only by doing so, Wellman claims, can those with a duty to support the (same particular) state treat one another fairly. I conclude, therefore, that Simmons does not succeed in his attempt to show that, even granting him a duty to do one's fair share in providing local security, Wellman cannot justify the claim that agents must obey the law in order to discharge this duty.

Note that this rebuttal of Simmons' argument depends on the assumption, which for the sake of argument Simmons explicitly grants, that agents have a duty to do their fair share in the provision of *local* security. I have assumed that "local security" is synonymous with "security for one's compatriots or fellow legal subjects," an assumption I take Simmons to share in this context. As I discussed earlier, Simmons rightly points out that claims of fairness only gain traction once an agent has a duty to participate in a given collective action scheme (broadly construed). It is only because it is assumed that agents have a duty to provide local security—that is, to support their particular state—that it is possible to appeal to considerations of fairness to explain why their support must take the form of obedience to law.

III.

The preceding discussion highlights two important points regarding natural duty approaches to justifying a moral duty to obey the law. First, with respect to Simmons' (and others') many criticisms, recent examples that combine instrumental and non-instrumental arguments, such as Wellman's appeal to both a samaritan duty of easy rescue and considerations of fairness, or my own appeal to the duty to promote basic moral rights and the duty to respect others' equal claim to authority over the form morally necessary collective action ought to take, fare better than previous accounts such as Rawls' and Waldron's, which rely on instrumental arguments alone.²⁹ Unlike those earlier defenses of political obligation, mixed accounts provide a plausible (and perhaps even compelling) justification for why all agents must support specifically political institutions if they are to fulfill certain of their natural duties, and why, if they have a duty to support the particular state in which they enjoy legal citizenship, that support must (at least) take the form of obedience to law. But, second, proving the antecedent of this last conditional claim continues to pose a challenge for advocates of natural duty approaches. Unless they can provide some justification for the claim that agents must support their particular state, those philosophers that ground their defense of political obligation in one or another natural duty will be unable to show that existing agents have a duty to obey the law of their state; indeed, they may be unable to show that agents have a duty to obey the law grounded in some natural duty in

any world except one governed entirely by a single state or legal system.³⁰

Endnotes

1. A. John Simmons. "The Duty to Obey and Our Natural Moral Duties." In *Is There a Duty to Obey the Law?* Christopher Heath Wellman and A. John Simmons (Cambridge: Cambridge University Press, 2005).
2. Christopher Heath Wellman. "Samaritanism and the Duty to Obey the Law." In *Is There a Duty to Obey the Law?* Christopher Heath Wellman and A. John Simmons (Cambridge: Cambridge University Press, 2005).
3. Such encouragement seems necessary given that, in my view, Simmons has successfully rebutted countless arguments in defense of a moral duty to obey the law over the past three decades. Despite the fact that many of the most important philosophers in the Western tradition have addressed this topic, I think it no exaggeration to say that none has made a greater contribution to the debate over the duty to obey the law than has John Simmons.
4. As I explain in more detail below, if an agent has a duty to obey the law, then the mere fact that the law requires some act from him provides him with a (possibly *prima facie*) moral reason to do that act. An agent has a reason to comply with the law if some fact other than the law's requiring it provides the agent with a reason to do that which the law would have him do. One can comply with a law (i.e., do that which the law would have one do) without obeying it (doing what the law would have one do because the law demands it); in fact, most people most of the time probably merely comply.
5. I will not attempt to summarize here Wellman's defense of each of the premises in the following argument. In particular, I will assume that Wellman reasons correctly when he argues that only political institutions (or, more precisely, a certain sort of modern state) can provide reliable protection against the perils of a Hobbesian state of nature. Simmons concedes something like this when he argues against the political (as opposed to philosophical) anarchist for the moral justifiability of a certain kind of state. See A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001), 122-57. Note that both Simmons and Wellman distinguish between a state's being justified—i.e., its enjoying a (possibly protected) liberty-right to enact, apply, and enforce laws—and a state's enjoying legitimacy—i.e., its enjoying a morally justified claim to authority over its subjects, to which correlates those subjects' duty to obey the state's laws.
6. Note that unlike fair-play arguments in defense of the duty to obey the law, the receipt of benefits from a particular state is not what grounds an agent's duty to support it. Rather, the natural duty to rescue others from the perils of the state of nature does so, but only on the condition that the duty can be carried out at a reasonable cost. Wellman's claim regarding the benefits individuals receive from the state is meant to address this condition. Unlike fair-play arguments, it makes no difference here whether the agent would prefer to forgo the benefits the state provides, at least at the price the state demands for them. Rather, as long as the agent receives enough benefits from the state so that the net cost for him of compliance with the law is reasonable, he has a samaritan duty to support the state. George Klosko's criticism of Wellman rests in part on the failure to appreciate the importantly different role that benefits to the individual play in fair-play and samaritan accounts of the duty to obey the law; see Klosko, "Samaritanism and Political Obligation: A Response to Christopher Wellman's 'Liberal Theory of Political Obligation'," *Ethics* 113 (2003): 835-40.
7. More precisely, agents have a duty to support a particular kind of state: at the very least, one in which agents (all agents? the average agent?) enjoy greater security than they would were they living in the state of nature. All references to the state

- or to an agent's particular state will assume that the state in question meets at least this criterion.
8. Wellman claims that this follows from "the commonsensical idea that each of us has good reason to want to be the author of our own lives, to choose the type of things on which we expend time and energy, and to be the one who determines which causes we support" ("Samaritanism," p. 41).
 9. One might well question the first of these two claims, as I make clear later in this paper.
 10. Simmons, "Natural Moral Duties," p. 183.
 11. For one defense of the duty to obey the law grounded in such a conception of agents' basic moral rights, see Allen Buchanan, "Political Legitimacy and Democracy," *Ethics* 112 (2002): 689-719.
 12. Or at least this is so insofar as such institutions are practically necessary for the secure enjoyment by all of their basic moral rights.
 13. Or at least Simmons thinks this true of the duty of charity; see "Natural Moral Duties," p. 183.
 14. For arguments in support of this claim, see Simmons, "Natural Moral Duties," and Sam Duncan, "The Borders of Justice: Kant and Waldron on Political Obligation and Range Limitation," *Social Theory and Practice* 33:1 (2007): 27-46.
 15. Moreover, if you could make such an argument, then there would be no need to appeal to a natural duty, such as Wellman's hybrid duty or the duty to promote basic rights, in order to justify my duty to obey the law.
 16. Lefkowitz, "Democratic Authority and the Particularity Requirement," manuscript on file with author.
 17. The reader may wonder whether the particularity challenge would still arise if such a world were organized as a single *federal* state. To take an analogous case, why must I pay property taxes to the relatively well-off state of North Carolina, rather than sending that money to the relatively poor state of Mississippi? I have argued previously that if decisions regarding the basic or constitutional structure of a legal system—including questions of jurisdiction such as federalism—are settled by a democratic procedure in which all those with a duty to support the political institutions in question enjoy a right to equal participation, then this variation on the particularity challenge can be met. If successful, this argument also addresses the case of a global federal state. See Lefkowitz, "A Contractualist Defense of Democratic Authority," *Ratio Juris* 18:3 (2005): 360-61.
 18. Simmons, "Natural Moral Duties," p. 120; "Consent Theory for Libertarians," *Social Philosophy and Policy* 22:1 (2005): 346-47.
 19. Those concerned only with finding a moral justification for (some) existing states' claims to authority, and so their citizens' (or subjects') duty to obey them, may view the continuation of this discussion as being of purely academic interest (in the derogatory sense of that phrase). Yet the outcome may have important implications for current practice. Suppose that a state of affairs in which the law actually enjoys the authority it claims is an end (though not the only end) that agents morally ought to promote. It makes a significant difference to what an agent ought to do if consent is the only means whereby a state can come to enjoy a justified claim to authority over individuals, or if it might also come to enjoy such authority on the grounds set out in the modified version of Wellman's argument for the duty to obey the law. If the former is true, then agents should promote a state of affairs in which agents can freely consent to the rule of a particular state. If the latter is true, they should do this *or* they should seek to create a single global state (or, perhaps better, a well-integrated global legal system).
 20. Simmons, "Natural Moral Duties," p. 187.
 21. *Ibid.*, p. 188.
 22. It may be that I am misinterpreting this last quote from Simmons, and that what he intends to challenge is the claim that agents must be *motivated* by the belief that they have a duty to obey the law. If that is what he means (and I suspect it is not), then the challenge is easily met, for neither Wellman nor to my knowledge any other defender of the duty to obey the law defends such a claim. Their concern is with a (purported) standard of right action, not judgments of moral worth or of an agent's character.
 23. As many philosophers point out, this argument seems to require the creation of a single global state. Given my earlier remarks about Wellman's ability to account for the particularity of the duty to obey the law, such an implication may be a good thing. It is important to remember, however, that states and other sorts of political institutions have often inflicted, and still do inflict, massive violations of basic moral rights. It may be, then, that the morally best world, at least with respect to maximizing the number of people that securely enjoy their basic rights, will be one that strikes some sort of balance between interaction in the state and interaction in the state of nature. If so, then if it were possible to move from the present world to that one in a morally permissible manner, and if the transition costs were not too high, then it would follow that agents morally ought not to pursue the only state of affairs in which Wellman's argument entails that they have a duty to obey the law.
 24. See Simmons, "Natural Moral Duties," p. 191, for a more complete description of the reasons an agent can have to comply with the law (in a particular case).
 25. Interestingly, if the only alternative to an agent's unilateral exercise of this limited discretion were that no one exercise it, the Lockean proviso would not prohibit such an act, since all of the agents would be left with "enough and as good" a degree of liberty as they would have enjoyed had the agent not unilaterally exercised the discretion at issue.
 26. Lefkowitz, "Contractualist Defense"; see also Buchanan, "Political Legitimacy," and Thomas Christiano, "The Authority of Democracy," *Journal of Political Philosophy* 12:3 (2004): 266-90.
 27. Simmons, *Justification and Legitimacy*, pp. 29-31.
 28. Simmons, "Natural Moral Duties," p. 188.
 29. Lefkowitz, "Contractualist Defense"; "On a Moral Right to Civil Disobedience," *Ethics* 117 (2007): 202-33; John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971); Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy and Public Affairs* 22 (1993): 3-30.
 30. I wish to thank the editors for the invitation to contribute to this issue of the *APA Newsletter on Philosophy and Law*, and the National Endowment for the Humanities for the award of a Summer Stipend that was instrumental to the completion of this paper. Any views, findings, conclusions, or recommendations expressed in this publication do not necessarily reflect those of the National Endowment for the Humanities.
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